

REPORT OF THE AD HOC COMMITTEE ON CONSUMER
AFFAIRS

to the

CHAIRMAN, GOVERNMENTAL SERVICES COMMITTEE,
SAN FRANCISCO BOARD OF SUPERVISORS

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Prepared for the Committee
by Rebecca R. Polland, Ph. D.
October 8, 1971



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Report of the Ad Hoc Committee on Consumer Affairs

The report of the committee will address itself to the following concerns: (1) the general nature of the problem of consumer protection; (2) the appropriateness of the municipal level of government for the discharge of the functions of consumer education and protection; (3) the current status of California legislation for consumer protection, and the implications of that legislation for municipal action in the area of municipal affairs; (4) the current status of administration on the state level of consumer protection functions, and the implication for municipal action; (5) national trends in municipal administration in the field of consumer affairs; (6) the possible place of a consumer protection agency within the existing governmental structure of the City and County of San Francisco.

I. Background: The Problem of Consumer Protection


The rising level of affluence in American society has brought with it increasing needs for consumer protection. Where alternatives for consumption have multiplied, with the rapid rise in discretionary spending in the period following World War II, the consumer increasingly needs guidance, assistance, and protection.⁽¹⁾ The very nature of a mass production economy, with its unprecedented levels of production and consumption, incorporates reliance on various forms of advertising to stimulate demand. Concurrently with the development of advertising as an integral function of the mass production economy comes the need for its regulation; the excesses of false and deceptive advertising lead to governmental intervention. Further, standards of acceptability in advertising change, with extravagant claims becoming increasingly subject to

regulation on both the national and state levels, and recently on the municipal level.⁽²⁾ The very mechanization which makes possible a dazzling array of consumer goods substitutes a distant and impersonal relationship between producer and consumer for the personal relationships of an earlier artisan economy. Further, the technical nature of the product often carries with it implicit and explicit needs for consumer guidance and protection. The consumer becomes increasingly dependent on repairmen. Enforcement of product warranties becomes a problem for the consumer, whose individual bargaining power was exhausted when he signed the purchase order or conditional sales contract. Finally, the increasing availability of credit to people unfamiliar with its use has posed major problems of regulation. "Much of the 'American way of life' is being paid for on the installment plan."⁽³⁾

The California Supreme Court said recently:

Protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society. . . . State laws governing relations between consumers and merchants are generally utilized only by informed, sophisticated parties. ⁽⁴⁾

The Court referred to the finding of the National Advisory Commission on Civil Disorders (the Kerner Commission), that persons living in low-income neighborhoods experience "grievous exploitation by vendors using such devices as high pressure salesmanship, bait advertising, misrepresentation of prices, exorbitant prices and credit charges, and sale of shoddy merchandise."⁽⁵⁾ The Kerner Commission analyzed the components



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of this situation:

Various cultural factors generate constant pressure on low-income families to buy many relatively expensive durable goods and display them in their homes. . . . Many poor families have extremely low incomes, bad previous credit records, unstable sources of income. . . . These families cannot meet the standard credit requirements of established general merchants. . . . Most low-income families are uneducated concerning the nature of credit purchase contracts, the legal rights and obligations of both buyers and sellers. . . . (6)

The California Supreme Court, in the decision in Vasquez v. Superior Court, emphasized the weakness in the position of the buyer vis-a-vis the seller, and the unfavorable position of the consumer in securing legal redress for wrongs:

'Modern society seems increasingly to expose men to group injuries for which individually they are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all. . . (7)

The needs of the consumer for protection have long been recognized, from the early local regulation of milk marketing to the national regulation of the purity and safety of foods and drugs, and of unfair and deceptive trade practices. (8) With the virtual explosion in variety of goods available to consumers in the period following World War II, and the exponential increase in installment financing, came a delayed but increasingly articulated recognition by national and state political leaders of the need for expanded consumer protection. There has been growing recognition of the consumer as a new and broad interest group, whose membership and common needs involve the total spectrum of society, from middle-class managers and professionals, to blue-collar and working-class rank and files, to the unskilled

or dependent groups whose low incomes make them particularly vulnerable to unwise allocation of personal resources, and whose personal circumstances reveal special needs for assistance and protection. Basically, the problem of consumer protection is the problem of a society oriented toward consumption, of an economy reliant on the stimulation of consumer demand, the problem -- that is -- of an affluent society.

Buying and selling is as old as civilization, and regulation of commercial transactions forms the subject-matter of the law of contracts, which is at the heart of the common law. There has, however, been a slow but increasingly perceptible shift in the philosophy of the statutory law embodying and elaborating on common law concepts, as well as in judicial interpretation, in the direction of greater protection for the buyer. The ancient doctrine of caveat emptor has been much modified by both legislative and judicial pronouncement responsive to the changing nature of the marketplace, in California as elsewhere. Similarly, there have been shifts towards greater protection for debtors in commercial law governing creditor-debtor relationships. California has been a leader in the passage of state legislation for consumer protection, and for the protection of debtors. Two questions are of concern to us: (1) What is the status of implementation of this legislation; (2) What is the responsibility of local government in consumer protection?

II. Responsibilities and Authorities of Local Government

The enterprise of national government since 1932 in expanding its areas of operation, and in particular the expansion of regulation following upon the assertion of long-dormant national authority to regulate interstate commerce, has tended to obscure the fundament of American governmental structure: that the police power, which includes the power to provide for the general welfare, inheres in local government. .

It may be well to consider the provision of the California Constitution. Article 11, Section 11 provides:

Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws. (9)

The meaning was early made explicit in an Opinion of the Attorney General that the police power includes the power to promote the general welfare, public convenience, or general prosperity.⁽¹⁰⁾

The Courts have reiterated this interpretation, that "other regulations" under Section 11 are those deemed necessary by the municipality for the health, peace, comfort, and happiness of inhabitants; that the police power is coextensive with the necessities of a situation and as broad as public welfare.⁽¹¹⁾

The Attorney General and the courts have repeatedly declared that the powers of municipalities under Section 11 are coextensive with state powers; the power therein delegated is as broad as that of the legislature itself, provided only that its exercise by any city or agency must be confined to that city or agency, and not conflict with the general laws of the state.⁽¹²⁾ The scope of activities regulated by localities, and supported by judicial findings under Section 11, includes a broad range of commercial

practices.

Preemption

With the expansion of both state and municipal legislation in the implementation of the police power, the question of legislative preemption was increasingly met. A certain ambiguity developed in judicial findings. The initial position had been that the courts were not inclined to hold that action by the legislature in a given field, however extensive, precluded different action in the same field, even of a similar character, by cities.⁽¹³⁾ The only cases that held that state regulation occupies a field so as to preclude ordinances that do not directly conflict with them are those where the legislature expressly provided that there shall be no local regulation on the subject.⁽¹⁴⁾

However, in People v. Commons, the court held that an ordinance which prohibits the same acts which are forbidden by state law is void to the extent that it duplicates state law. In this case, it was held that state law fully occupied the field, and that a local ordinance attempting to impose additional regulation was void, even though it did not directly conflict with any express provision of state law.⁽¹⁵⁾ Similarly, in later cases, the court held that a local law is in conflict with general law if the general law "occupies the entire field."⁽¹⁶⁾

In an effort to deal with the ambiguity which developed in the forties and fifties from the increasing need to establish precisely the circumstances under which state legislation occupies the field, and thus preempts local regulation, the legislature began the practice of specifying its intention in given pieces

of legislation. Thus in Section 1752 of the Civil Code, in the Consumer Legal Remedies Act of 1970, it was specified that the state was not preempting the field in the regulation of unfair and deceptive trade practices.⁽¹⁷⁾

III. Current Status of California Legislation for Consumer Protection

Prior to the first major breakthrough in consumer protection represented by the passage of the Unruh Act in 1959, consumer protection was "deficient in many areas."⁽¹⁸⁾ The previously existing legislation (the Small Loan Law and Personal Property Brokers Law) did not prohibit such abuses as the signing of blank contracts, the waiving of existing defenses, or the imposition of exorbitant financing rates. The passage of the Unruh Act was in conformity with a then-current trend toward state regulation of retail installment sales, "giving legislative expression to the popular disapproval of the unethical practices often accompanying those sales."⁽¹⁹⁾

The Unruh Act was passed after a statewide investigation of retail sales practices conducted by Mr. Unruh as chairman of the Assembly Committee on Finance and Insurance. Hearings before that committee and reports prepared by committee staff detailed a pattern of "harsh practices" which the act was designed to mitigate. These were set forth in the Final Report of the Committee: There was no legal requirement that full details regarding cost and terms of transaction be embodied in an installment contract; buyers were induced to sign blank contracts containing blank spaces to be filled in later. Courts having

held that time-price differential is not interest, "excessive amounts (were) exacted from the consumer." Delinquency and collection charges were assessed for "whatever amount the traffic will bear."⁽²⁰⁾ Attorneys' fees and court costs were charged to the debtor although they were not always actually incurred. Debtors were not always given the right of redemption, or furnished with a statement of the amount obtained through a resale.⁽²¹⁾

The Unruh Act, a lengthy and complex piece of legislation, dealt with these practices and others. The Rees-Levering Act, effective in 1962, applied similar regulation to the sales of motor vehicles. The Unruh Act allowed an effective simple interest rate of 18 percent. It included requirements for disclosure, requiring that seller shall not obtain buyer's signature to a contract when it contains blank spaces, and that charges and costs of each type of credit be itemized. It protected the buyer's right of refinancing under certain circumstances. It forbade arbitrary acceleration in absence of actual default.⁽²²⁾

A third major advance in contemporary California legislation to protect consumers came in 1965, in revisions of the Business and Professions Code which authorized the Attorney General and District Attorneys to bring actions for the collection of civil penalties against merchants engaging in misrepresentation and deceptive trade practices, with a legislative provision for the collection of \$2500 per violation. This legislation, with respect to the Business and Professions Code, went far beyond the protections previously available under

Section 3369 of the Civil Code, and under the common law of fraud, eliminating the scienter requirement. Under the 1965 legislation, some local District Attorneys have been actively engaged in litigation and the collection of substantial penalties. (In Sacramento, for example, in the first three months of 1971, approximately \$90,000 in penalties was collected under the provisions of Section 17536; this activity more than paid for the staff costs involved. As we shall report in a later section of this paper, the District Attorney in San Francisco has not been active in this field, preferring to concentrate on the more traditional functions of criminal prosecution.)

The fourth major contemporary California legislation to protect consumers came in 1970, in the so-called Consumer Legal Remedies Act, designed to deal with unfair and deceptive trade practices. This legislation provides for actions for injunctive relief or damages (actual and/or punitive) on behalf of any consumer who suffers as a result of a deceptive practice declared to be unlawful.

The significant contributions of the Consumer Legal Remedies Act are (1) that it provides for civil rather than criminal prosecutions; (2) that it provides for consumer class actions for recovery; (3) that it specifies 16 unfair and deceptive trade practices in detail; (4) that it omits the scienter element of general fraud theory. The provision for civil damages means simply that it is more likely that the act will be enforced. The harshness of criminal penalties under predecessor consumer statutes, and the greater difficulty under the law of establishing criminal guilt, meant in practice that enforcement was difficult to obtain. The new provision for class action also makes enforcement more likely.

The Consumer Legal Remedies Act is patterned after the national Uniform Deceptive Trade Practices Act, with two significant modifications. First, its procedures provide greater opportunity for settlement before legal action. Second, it omits the standard section outlawing "unconscionable trade practices", limiting its prohibitions to unfair and deceptive practices. (24)

The deceptive trade practices specified in the act are intended to outlaw such practices as bait and switch advertising, and direct sales fraud. The act makes illegal the practice of "advertising goods or services with intent not to sell them as advertised" and "advertising goods or services with intent not to supply reasonably expected demand . . ." as well as other

types of misrepresentation of quality, condition, origin, or characteristics. (25)

There is no requirement that the Attorney General or any other governmental agency obtain a judgment prior to an action by an individual or class of individuals. A "triggering mechanism" was deemed unacceptable "because the office of Attorney General is seriously understaffed in its Consumer Affairs section." There could be "no guarantee that the Attorney General would act and if he did not, defrauded consumers would be without rights." (26)

In addition to the legislation here referred to, California has on its books a multitude of acts designed and intended to protect the consumer. The State Health and Safety Code, Insurance Code, Penal Code, Public Utilities Code, Revenue and Taxation Code, and the Business and Professions Code, Agricultural Code, Corporations Code, Financial Code, Administrative Code, and Civil Code, all contain consumer protection provisions, with enforcement powers assigned to a variety of administrative agencies or to the Attorney General. (27)

IV. Administrative Implementation of Legislative Sanctions

California has on its books state legislation adequate to protect the consumer. The deficiency lies in its administrative machinery; there is no adequate machinery in existence for administrative implementation of legislative sanctions, either in the form of an adequate structure charged with continuing administrative oversight or in the form of adequate facilities for litigation on behalf of the consumer. Several factors are involved:

A. Understaffing of the Consumer Fraud Section
of the Attorney General's Office

This understaffing has been attested to by the Attorney General himself in an Amicus Curiae brief filed in Vasquez v. Superior Court and referred to in the court's opinion:

The Attorney General has filed an amicus curiae brief on behalf of plaintiffs in which he asserts that class actions by private litigants are necessary to vindicate the rights of consumers. His office receives 10,000 consumer complaints a year and the Consumer Fraud Division has fewer personnel than the average small law office engaged in the representation of the sellers of foods. Furthermore, he states, although his office may take legal action in cases of major significance, it cannot undertake to represent private citizens seeking vindication of rights. (28)

There is little practical likelihood that sufficient expansion of this office will take place in the foreseeable future to enable it to deal adequately with a caseload of upwards of 10,000 complaints; note that this figure represents complaints received before the passage of the new Consumer Legal Remedies Act, and the additional protections of the new Song-Beverly Consumer Warranties Act. On the assumption that this new legislation increases the legal scope for consumer protection, the likelihood is even smaller that staff expansion adequate to enforcement of the new legislation is a realistic possibility. Nor does the act, as we have indicated, limit responsibility for enforcement to the Attorney General, in part simply because such limitation would unduly restrict the possibility of realizing the intention of the legislature.

B. Lack of Enforcement of the Unruh Act

Vasquez was an action brought under both the predecessor legislation to the Consumer Legal Remedies Act and the Unruh Act. It is significant that, twelve years after the passage of the Unruh Act, it is one of a handful of cases brought on behalf of consumers under that act. In an earlier section of this report we specified some of the practices against which this 1959 legislation was directed in order to underline the reality that merely legislating against abusive practices does not end them. In the main, the provisions of this remedial legislation (the Unruh Act and the Rees-Levering Act applying to sales of motor vehicles) have not been enforced in the areas in which they are most needed.⁽²⁹⁾ The Unruh Act was virtually unenforced until after the passage of the Economic Opportunity Act of 1964, with its provision for local legal services for the poor.

The currency of the need for enforcement of this kind of protection is indicated by illustrations from current legal services caseloads. In Van Slayke v. Ralph Williams, Bayshore Chrysler and Plymouth (Civ. 146654), for example, filed by SFNLA and now in San Mateo Superior Court, it is claimed that salesmen did not quote insurance charges in the price, thus violating the Rees-Levering Act. The availability of legal services under OEO does not meet the needs for consumer protection, however. The OEO is restricted to clients in poverty income brackets. Further, consumer litigation is only a minor part of its legally mandated caseload. And finally, administrative action short of

litigation or threats of litigation is required for day-to-day realization of a consumer protection program.

C. Administrative v. Legal Action

It is a truism that courts and legislatures are not administrative agencies (this, e. g., is the lesson of Brown v. Board of Education). There is both a requirement for, and a possibility of, administrative action short of litigation or threats of litigation. No central administrative mechanism for consumer protection exists on the state level, departmental labels to the contrary notwithstanding.

One may begin by contrasting the reports of the Office of Consumer Counsel for the State of California for 1960 and 1961 with the report for 1970. In her first annual report to the Governor, the Consumer Counsel in 1960 defines her role as that of "public defender of the consumer interest". She italicizes the statement that "The Consumer Counsel is the people's lobbyist."⁽³⁰⁾ The functions of the office, as specified in its founding legislation, were to advise the Governor; to recommend legislation to promote the interests of the people as consumers; to make studies deemed necessary; to appear before other governmental bodies on behalf of the consumer interest. The functions were educational and promotional not administrative.⁽³¹⁾ In its second year of operation, the Office of Consumer Counsel was extremely active in legislative lobbying, and assisted in obtaining legislation on health and safety, and abusive selling practices. Under this legislation, however, administrative responsibilities lay

elsewhere, scattered throughout state agencies -- a circumstance which still prevails. (32) There was no concept of the Consumer Counsel as an administrative agency; the concept was of facilitating local enforcement.

From 1966 to 1969, the Office of the Consumer Counsel issued no annual reports of its activities. The annual report was resumed in 1970, with a substantially different tone. Absent was a notion of the Office as a people's lobby. The concept of advocacy had disappeared; in its place was a concept of providing information to the Governor and to the public.

By law, the Office of the Consumer Counsel is responsible for keeping both the Governor and the legislature up to date on all matters of importance to California consumers. However, the Consumer Counsel believes her responsibility goes much further. Acting from her conviction that the best protected consumer is the aware and the informed consumer, she has focused her strongest efforts on educating and informing the buying public, for she believes a thoroughly informed society of consumers is a far more effective and less expensive deterrent to dishonesty, fraud, and misrepresentation. (33)

What is here expressed is a reversion to the concept of caveat emptor, albeit in modern dress, i. e., let the educated buyer beware.

An illusion of expanded consumer protection was obtained in the recent assignment of the Office of Consumer Counsel to the former Department of Professional and Vocational Standards, now renamed the Department of Consumer Affairs. The Department of Professional and Vocational Standards was not formerly and is not now a central location for all consumer protection responsibilities. It is simply, as its name implies, a

collection of licensing agencies. Originally established in 1930 as a home for a diverse group of professional and vocational licensing boards, its primary purpose and orientation has been the protection of practitioners against unqualified competitors. The Department consists of 43 Boards, Bureaus, and Commissions responsible for regulating some 50 professions and vocations. (34)

The legislation which accomplished this new designation, however, did add significant new powers to the earlier powers granted on the establishment of the first Office of Consumer Counsel. The Department of Consumer Affairs, effective July 1971, has added to its educational, informational, and representation functions the power of subpoena and the power to hold hearings. Thus, its functions of investigating consumer complaints are potentially considerably strengthened. (35) It can develop all necessary information on particular complaints required for the filing of successful actions. It cannot, however, initiate legal action. The existing procedure is for the Department to turn over such information to the Attorney General or to local District Attorneys for legal action. (36) As our earlier discussion has indicated, the shortage of staff in the Attorney General's office acts to impede effective enforcement. The variability in local District Attorney's offices adds further to uncertainty. (37)

V. National Trends in Municipal Administration in Consumer Protection

Consumer education, assistance, and protection has been an increasingly recognized municipal responsibility, following upon the great urban-rural migration of the fifties and sixties. Within the past three or four years, departments of consumer affairs have been established in several metropolitan centers. These municipal departments coexist with state departments or state efforts at consumer protection, with state and local activities serving a function of mutual reinforcement.

The most notable development has been in the New York metropolitan area, where both the city of New York and Nassau County have well-supported departments. Other major urban or industrial areas with newly developing consumer protection offices include the Philadelphia metropolitan area, where both Philadelphia and Camden (New Jersey) have established these services; Chicago, Illinois; Detroit, Michigan; Columbus, Ohio; Washington, D. C.; Jacksonville (Dade County) Florida; Portland (Multnomah County) Oregon; St. Louis, Missouri; Louisville, Kentucky. In California, Santa Clara County has recently initiated a consumer protection program as an additional responsibility within its Office of the Sealer of Weights and Measures.

There are, of course, varying patterns of organization, given differences in the realities of governmental structure, as well as in size, density, and characteristics of population.

The central characteristic of significance as a model,

however, is the use of a local variant of the Uniform Deceptive Trade Practices Act.

The New York City program initially used the device of expanding the existing department of weights and measures, to gain acceptance for innovation. This was done by charter amendment in 1968.⁽³⁸⁾ In 1969, the functions of the New York City Office were broadened by additional legislation modeled on the Uniform Deceptive Trade Practices Act.⁽³⁹⁾ Similarly, the 1970 ordinance which expanded the authority of the Nassau County Commissioner of Consumer Affairs was based on the Uniform Deceptive Trade Practices Act.⁽⁴⁰⁾ Further, both the authorities of the Washington, D. C. office and the Jacksonville operation use variants of this legislation. The New York City, Nassau County, and District of Columbia ordinances all contain the unconscionability clause of the model legislation, which provides that:

Any act or practice is unconscionable if it takes unfair advantage of the lack of knowledge, ability, experience, or capacity of a consumer which results in a gross disparity in the rights of a consumer as against the merchant or results in a gross disparity between the value received by a consumer and the price paid by the consumer. ⁽⁴¹⁾

This is the final expression of active public responsibility for consumer protection, and echoes recent positions of the New York courts. New York Courts have been in the vanguard of the development "of the concept that a transaction can be 'unconscionable' even if it is not fraudulent or deceptive. . The judicial expansion of the unconscionability doctrine has been spurred by a provision in

the Uniform Commercial Code, which specifically provides that unconscionability may be proven in a trial and may be grounds for a rescission of a contract. . . ." (42)

The development of model legislation in various areas of commercial law is a movement which dates back to 1949, with the early activities of the National Commission on Uniform State Law. Members of this commission are appointed by the governors of various states, and typically represent the established bar, law school faculties, and other experts in specialized fields of law. The Commission has produced a Uniform Commercial Code, adopted with some modifications by California in 1962; and in 1964 a Uniform Deceptive Trade Practices Act. (43) This last proposal was forthwith adopted in several states, and as we have seen above, was the model for the California Consumer Legal Remedies Act. As we have noted, however, the version adopted in California lacked an unconscionability clause. As we also reported, the California statute specifically disclaimed the intention to pre-empt the field.

VI. The Place of a Department of Consumer Affairs in the Government of San Francisco

A. Proposed Functions

The functions of a Department of Consumer Affairs should include development of a program of consumer education, particularly including credit counselling; development of a program of consumer research specific to San Francisco, particularly seeking information on buying habits and sales practices, as well as systematic reports on abuses and nonconformity with

existing state and federal consumer protection laws; the investigation of specific consumer complaints; the conduct of investigative research preparatory to possible litigation; the representation of consumers in handling grievances with vendors on an informal basis, seeking settlements satisfactory to both parties without litigation; and finally, the initiation of consumer actions for recovery of damages, including consumer class actions under the California Consumer Legal Remedies Act of 1970.

B. A Commission of Consumer Affairs Established by Ordinance

In order to assure maximum responsiveness to the public, it is proposed that a Department of Consumer Affairs with the above-enumerated functions be established by ordinance, directing that it report to a Commission on Consumer Affairs. The Director of the Department should serve as Director of the Commission, at the pleasure of the Commission. The Commission, to be established by ordinance, would be appointed by the Mayor with the approval of the Board of Supervisors. The founding ordinance should specify role qualifications for membership. A Commission of nine members is suggested, to include at least one member of the business community, one representative of organized labor, one representative of a bona fide consumer organization, one representative of an organization representing low-income persons, one representative of an organization representing senior citizens, one representative of an independent citizen's group concerned with public service and policy, and one

representative of an organization of members of the bar concerned with consumer affairs. The make-up of the Commission is intended to ensure appointment of staff and development of policy responsive to consumer needs. We submit that the charter permits such a structure, and that such a Commission would enjoy the power of subpoena which existing Boards and Commissions have under the city charter. (44) The Commission would issue such regulations as were necessary to carry out the functions specified in Section V.A above, after fully informing (45) itself by appropriate means.

C. Proposed Legislative Authorities

In addition to the general powers to develop programs of research and education, receive complaints and conduct investigations thereon, the proposed legislation should include the regulation of unfair or deceptive trade practices, along the pattern of the New York City ordinance of 1969, and the California Consumer Legal Remedies Act of 1970. The proposal might follow the model of the Uniform Deceptive Trade Practices Act or other California legislation.

The proposed department should have power to initiate class actions on behalf of the consumer, under the Consumer Legal Remedies Act. We submit that under the city charter, attorneys on the staff of the proposed Department of Consumer Affairs would be empowered to litigate on behalf of the consumer. The right to file consumer class actions under the Consumer Legal Remedies Act would stem from the implied powers of the city. The charter provides:

Section 2. The City and County may make and enforce all laws, ordinances, and regulations necessary, convenient, or incidental to the exercise of all rights and powers in respect to its affairs, offices, and employees, and shall have all rights and powers appropriate to a city, and a city and county, subject only to the limitations provided in this charter, including the power to acquire and construct plants, works, utilities, areas, highways and institutions outside the boundaries of the city and county. . . The specifications or enumeration in this charter of particular powers shall not be exclusive. The exercise of all rights and powers of the city and county when not prescribed in this charter shall be as provided by ordinance or resolution of the Board of Supervisors.

It is well established that when a city charter does not expressly deny to the city the power to perform a municipal function such a power exists. (46)

D. Staffing and Organization

The three major functions of (1) education and research; (2) credit counselling; (3) consumer protection advocacy would be reflected in the proposed organizational structure. The proposed Department would have three major central office units responsible for the carrying out of functions under these headings. In addition to the central office staff, the proposal calls for two neighborhood centers. The Director of Consumer Affairs would be responsible for supervision of personnel in the three functional units, for over-all program planning, for coordination of the work of the central staff with the neighborhood centers, with the development of reports to the Commission and to the Board of Supervisors, with recommendations for policy, with appearances before regulatory bodies in the consumer interest, and with other relations with public and private agencies operating in the area of consumer protection. The office

of the Director would be provided with the minimum staff necessary for carrying out of these functions, namely, an administrative assistant and a secretary.

(1) Division of Education and Research

The functions of education and research are interrelated. It is proposed that a division of education and research, in cooperation with other public and private agencies, plan and carry out programs of consumer research. Such programs would collect information on expenditure patterns, buying habits, patterns of income allocation among various consumer groups in the city. These studies should be conducted with the participation of the groups involved. Participation by volunteers and members of the target populations in such studies on a large scale in pilot programs of consumer-expenditure research would in itself have a significant educational effect. There is no up-to-date information now available, from objective governmental sources, of consumer-expenditure patterns, either on a national or a local level. The collection of data on income and expenditures among low-income groups is a difficult enterprise, and one requiring sophisticated and innovative techniques. A program for such data collection could be developed with the assistance of the U. S. Bureau of Labor Statistics. Such data would in turn point to particular problem areas in which consumers need particular guidance and assistance.

To illustrate the educational value of a program of consumer research, one might take as an example a study of food prices in relationship to nutrient purchased in which

housewives in target areas acted to collect the data for the survey. The participation of a large group of housewives in such a study, on a volunteer or part-pay basis would itself be a significant educational experience for those volunteering. Guidelines for the study would of course be developed by the Division of Education and Research of the proposed Department of Consumer Affairs in cooperation with other experts in the particular area of specialty. (For example, in the illustration here suggested, of relationship between food prices and nutrients purchased, the cooperation of the Department of Nutritional Science of the University of California at Berkeley might well be obtained. Note that this is a different focus from the current preoccupation with unit pricing.)

An additional responsibility of the Division of Education and Research would be the development of proposals to foundations for the carrying out of sponsored projects, in the areas of consumer buying practices, budgetary allocations, and education. Before truly effective programs of consumer protection can be developed, it is necessary to have more specific information about current attitudes and patterns of behavior. Such information will serve to pinpoint specific problem areas in need of remedial attention.

The proposal calls for a two-person office of education and research, consisting of a division chief and a secretary.

(2) Credit Development and Counselling

The salient problem of low-income consumers is the problem of credit. As the sections of our report on legislative reforms in the granting of retail installment credit suggested, the difficulties of low-income consumers are often related to lack of education concerning the nature of the credit purchase contract, and of the legal rights and obligations of buyers and sellers under such contracts. A significant function of the proposed Department of Consumer Affairs should be the development of a program of credit development, coupled with credit education. The proposal envisions a single professional, assigned to a division of Credit Development and Counselling, reporting to the Director of Consumer Affairs, who would be responsible for working with banks and other lending agencies in the development of realistic but innovative programs to promote sound availability of credit to low-income consumers. This officer would also work with consumers themselves to improve their understanding of credit practices.

The granting of credit could be compared to the problem of insuring a population at risk; the problems are of defining the population in such a way as to provide equitable and reasonably complete coverage. The main assignment of the division of Credit Development would be that of developing new approaches to a difficult problem, working with established lending agencies, many of whom have publicly expressed a commitment to attempting solutions of this problem. This office would provide an official focus through which such private commitments could be implemented. The function of

credit counselling, that is, working with individuals and groups in the creditor community, would be carried out in cooperation with other local groups. It is another aspect of the problem of education in allocation of resources which is considered in the proposal described above as education and research in buying habits. The final, and in a sense, most immediate, aspect of the total program of consumer affairs is that of providing current protection: this is to be the responsibility of the largest unit of the proposed office, the division of investigation and litigation.

(3) Consumer Protection Enforcement

It is proposed that a Chief of Consumer Protection Enforcement, reporting to the Director of Consumer Affairs, be assigned the responsibility of investigating complaints and violations of existing consumer protection statutes such as the Unruh Act, or the Consumer Legal Remedies Act; negotiating settlements where possible; or initiating civil actions for relief of injured consumers. The office of consumer protection enforcement would have a major responsibility for the conduct of litigation in the interests of consumers, and would file consumer class actions under the Consumer Legal Remedies Act. The office should consist of a Director who is a member of the California bar, and two additional staff attorneys, plus necessary secretarial assistance.

(4) Neighborhood Centers

Two neighborhood centers are proposed, one to be located in the Richmond-Sunset area, and one to be located in

one of the OEO target areas. Each center would have a single paid professional, plus secretarial assistance. The neighborhood centers would be staffed by volunteers, and the professional positions should be filled with persons experienced in directing and organizing the work of volunteers. It is also proposed that the offices of labor unions, which have a quasi-public function, could be utilized as consumer service and information centers without cost to the taxpayers.

(5) The Use of Volunteers and Students

It is proposed that active use of volunteers and students, including law students, would be made by all divisions of the Office of Consumer Affairs. Law students have been increasingly participating and offering assistance in public service litigation in many areas, and law schools are beginning to develop programs for the granting of credit for such participation. This is a significant source of manpower for the investigation and research necessary in particular for the consumer protection enforcement unit. The experience of the New York Department of Consumer Affairs has shown that volunteers are an important and valuable source of manpower in carrying out a consumer affairs program. This is an area of public service which appears to hold great appeal to competent volunteers of all ages. The New York example suggests that senior citizens are a significant asset in a volunteer service program.

(6) The Use of Foundation Support

Consumer education, research and protection is an area that currently is of great public interest and concern.

The functions of the proposed office are conceived as primarily the development of innovative programs in the specialized fields described. Such innovative programs should be designed with the intention of attracting and applying for support from public service groups such as foundations interested in creative and experimental approaches to the solving of public problems. It is anticipated that such support will be readily developed.

The anticipated use of target area residents in carrying out programs of field research in consumer expenditures, in educational techniques, and in credit counselling techniques will meet the requirements of new public employment programs, thereby encouraging the allocation of federal moneys, in addition to foundation grants.

E. Relationship to City Attorney

Under the city charter, as now written, the City

Attorney is an independently elected official whose responsibility it is to "represent the City and County in all actions and proceedings in which it may be legally interested, or, for or against the City and County, or any officer of the City and County in any action or proceeding, when directed to do so by the Supervisors, except where a cause of action exists in favor of the City and County against such officer." (462)

The language of the charter thus refers to actions in which the City and County as a legal entity is involved, i. e., actions involving the property of the city itself, or the ministerial acts of city employees. This is an important and far-reaching responsibility, but it does not envision the representation of citizens in private actions, even though such actions have a public significance. The litigation proposed for the Consumer Protection Enforcement Division of the Office of Consumer Affairs involves representation of consumers in civil actions, and as such does not in any way conflict with or duplicate the activities or responsibilities of the Office of City Attorney.

F. Relationship to District Attorney

Traditionally, the office of the District Attorney has represented the people in their corporate sense against those who violate the law. Traditionally, this has been a function directed to criminal violations. Indeed, the charter of the City and County of San Francisco provides only that the District Attorney "either in person or by his assistant

shall prosecute all criminal cases in the municipal and superior courts, draw all complaints, and issue warrants for the arrest of persons charged with crime who are to be prosecuted in such courts." (47)

In the intervening years since the writing of the charter, the passage of considerable legislation on the state level assigning a variety of functions, including those of such legislation as Section 17536 of the Business and Professions Code passed in 1965, to the District Attorneys, has somewhat ellided the traditional distinction between the District Attorney as the appropriate agent for criminal prosecution and the private bar as the appropriate agency for civil prosecution. Section 17536 is itself a symbol of the increasing ellision between civil and criminal action. Traditionally, the assessment of penalties (in contrast to the award of damages) has been a hallmark of criminal action; penalties have traditionally been considered to be criminal in nature. Section 17536, however, specifies that penalties levied shall be in the nature of "civil penalties", and that actions under Section 17536, which gives the Attorney General and District Attorneys the right to collect penalties of \$2500 for each violation (i. e., each act of misrepresentation or deceptive trade practice under the act) are "civil actions".

Nonetheless, the District Attorney of San Francisco, given the broad nature of his responsibilities, and the fundamental mission of his office in prosecution of criminal violations, has been unable to devote any substantial proportion of the resources of his office to action under 17536. In the

past year, only three actions have been instituted by the San Francisco District Attorney under this particular legislation, and no penalties collected.

This seems to us to be appropriate and proper. It is the position of the committee that the distinction between criminal and civil violations is particularly important in the area of effective consumer protection, and that this distinction should not be ellided, but should be clearly maintained. Consumer protection actions are civil, and not criminal actions. They should be carried out by a separate litigation unit, within an organization whose mission is not the prosecution of crime, but the positive protection and education of the consumer. If carried out within such an organization, with such a positive and not a punitive orientation, it is submitted that it can be maximally effective, with maximum safeguards for all parts of the community.

Section 17536 is by its terms limited to staffs of the Attorney General or the local District Attorney; the Consumer Legal Remedies Act of 1970, however, offers an appropriate vehicle for the filing of consumer class actions in civil proceedings to the proposed litigation staff of the Office of Consumer Affairs.

As its most recent report shows, the District Attorney has a wide range of existing responsibilities, fundamentally in the enforcement of the state Criminal Code.

The Office of the District Attorney has the "multiple responsibilities of initiating all felony prosecutions, processing felony cases in the Municipal Court, processing all misdemeanor cases, supervising the Police Department in preparation of arrest and search warrants, and issuing complaint citations." (43a) The types of offenses involved in "no-warrant" arrests in 1970-71 included narcotics offenses, sex offenses, weapons offenses, conspiracy, driving offenses, gambling, theft, assault, burglary, robbery, and auto thefts; the total of all felony and misdemeanor prosecutions approximated nine thousand. (43b) More than eight thousand felony cases were filed in Municipal Court. (43c) During the fiscal year 1970-71, the departments assigned to handling criminal and traffic matters handled the cases of 114,143 persons accused of violations of such laws, exclusive of parking violations. (43d) The four general Departments of the Municipal Court within the jurisdiction of the Office of District Attorney handled 24,050 misdemeanor cases during the fiscal year 1970-71 alone. (43e)

Additional responsibilities include the handling of appeals cases and complaint hearings. During the fiscal year 1970-71 there were 3,230 case filings in the Superior Court Division, as trial calendars continued to grow. (43f) Further, as the District Attorney points out in his annual report, "the complexity of legal defenses available by court decisions continues to increase the average length of time required to be spent in the prosecution of each felony case. . . . Written briefs, memoranda and criminal

records required . . have multiplied. . " (43g)

Given the heavy workload in the priority areas of criminal prosecution, little staff time has been available for attention to so-called "white-collar crime". The Business Investigation Section investigated and prosecutes "the following types of offenses: Embezzlement, Thefts by False Pretenses, Corporation Security Violations, Forgeries, Credit Card Violations and other related criminal activities." (43j) The Annual Report of the District Attorney includes resumes of "some of the more important cases of the past year" filed as a result of the activities of this section. Five cases were reported, of which four involved embezzlement or theft by employees from their employers; the fifth (People v. Richardson) was the case of a "travel promoter who collected over \$70,000 from numerous people for fictitious charter flights." (43j)

The District Attorney devoted a paragraph of his report to activities in which he obtained "injunctive relief in cases involving false advertising and unlawful business practices". He pointed out that these actions "can result not only in stopping illegal business practices, but in the county's receiving up to \$2500 for each violation." (43k) No specifics were given, however, in contrast to the reports of activities in other areas; we were told orally, however, that under this section, three actions were filed and no penalties collected.

G. Relationship to Bay Area Consumer Protection
Committee

The Bay Area Consumer Protection Coordinating Committee is a voluntary agency established on the initiative of the Federal Trade Commission in 1970 as an association of local, state, and federal law enforcement agencies with consumer and investor protection responsibilities. Its goals are the identification of chief problem areas through pooling information; coordinated enforcement, allocating enforcement resources in accordance with priority of needs; provision of a one-stop consumer grievance service; preparation of reports on need for corrective legislation on the local, state, or federal level. The "one-stop consumer service" is provided through a Post Office Box number, supplemented with stations in local grocery co-operatives. Still in its beginning stages, the Coordinating Committee clearly lacks the resources to provide active consumer assistance particularly among low-income groups. It should be seen as a supplement to the proposal for a Department of Consumer Affairs. It is fundamentally exactly what it says: an effort at coordination. The Committee includes representatives of the Investment Fraud Section and the Consumer Fraud Section of the California Department of Justice, the California Department of Consumer Affairs, the District Attorney of Alameda and San Francisco County, the Fraud Detail of the San Francisco Police Department, the Post Office, and the Oakland and San Francisco Sealers.

This list of member agencies is in itself an argument for a Department of Consumer Affairs in San Francisco. The weakness of existing structures is the emphasis on consumer protection as related to criminal fraud; where the alternatives have been between the prosecution of abuses of fair trade as criminal and no protection for consumers, the choice has been for no protection. The harshness of criminal sanctions for commercial fraud has established an either-or situation in which consumer interests have gone virtually unprotected. A police fraud detail is not the appropriate agency for the kind of consumer protection activity envisioned in a Department of Consumer Affairs. We have reviewed the organizational and staffing factors which make the state Department of Consumer Affairs and the Attorney General's office inadequate to the task. We have noted also that although there is on the books, and has been since 1965, state legislation (Section 17536 of the Business and Professions Code) which has been the source of aggressive consumer protection programs in other counties (as in Sacramento) without additional appropriations to such offices, the San Francisco District Attorney has initiated few actions in this field.

H. Relationship to Better Business Bureau

The Better Business Bureau is a self-policing agency for the business community. It performs many useful services. By its own regulations it functions only in limited areas of consumer matters. It cannot be expected to be an aggressive advocate of the consumer interest. Active protection of the public interest requires a public agency.

VI Summary

In the modern marketplace, consumers need protection by government. The municipal government is an appropriate agency for providing such protection. The police power, which includes the power to legislate for the general welfare, clearly includes a consumer protection authority. In California, the Consumer Legal Remedies Act of 1970, a broad proscription of unfair and deceptive trade practices which provides for consumer class actions for recovery of damages, specifically disclaims pre-emption of action on other levels of government. There is no central state agency charged with active enforcement of consumer protection authorities; the origins of the State Department of Consumer Affairs are dual: as a lobbying agency, now with a predominantly informational and educational focus; and as a professional and vocational licensing agency. The Attorney General, by his own statement, is grossly understaffed in the Consumer Fraud section; his actions in this area must be limited to those having statewide implications. Nationally, there has been a developing trend in the establishment of local Departments of Consumer Affairs with

substantial powers. The greatest potential for consumer protection action lies in civil, and not criminal, litigation. To fulfill the function of consumer assistance, a new and separate organization with a distinctive mission should be established within the city government.

VIII. Recommendations

1. That the Board of Supervisors by ordinance create a Commission on Consumer Affairs with the following responsibilities:

- a. To authorize a program of consumer education;
- b. To authorize a program of consumer research and reports;
- c. To issue rules and regulations for the conduct of its affairs, on the basis of information gathered by appropriate means;
- d. To issue subpoenas;
- e. To appoint a Director of Consumer Affairs responsible for administration of consumer education and research; the Director shall represent the consumer interest before other government agencies, including legislatures and regulatory agencies; the Director shall receive and evaluate complaints and initiate investigations relation to consumer matters and take appropriate action; the Director shall be responsible for a program of credit development and counselling;
- f. To propose legislation on consumer affairs.

2. That the ordinance creating the Commission on Consumer Affairs specify role qualifications for membership. The Commission shall be composed of nine persons, to be appointed by the Mayor with the approval of the Board of Supervisors, with at least one representative from the business community, one representative of the district merchants, one representative of a bona fide consumer organization, one representative of organized labor, one representative of an organization representing senior citizens, one representative of an independent citizens' group concerned with public service and policy, and one representative of an organization of members of the bar concerned with consumer affairs.

3. That the Director of the Commission on Consumer Affairs serve at the pleasure of the Commission, and be empowered by ordinance to initiate civil action, including consumer class actions, for violation of laws, including those laws relating to unfair or deceptive trade practices, and to retail installment sales practices and retail installment sales financing practices forbidden by law.

4. That the Commission of Consumer Affairs be empowered by ordinance to employ staff attorneys in order to carry out the provisions of (3) above.

5. That the staff of the Commission of Consumer Affairs be organized in the form of a central office with three functional divisions, and with two neighborhood centers using a combination

of professional and volunteer staff, including the use of students; that the three functional divisions be a division of education and research; an office of credit development and counselling; and a division of consumer protection enforcement; that a total of \$250,000 be allocated for salaries and expenses.

6. That the Director of Consumer Affairs be directed to develop proposals to foundations and other sources of funds to finance the carrying out of projects which might be developed by the staff.

PROPOSED BUDGET

SALARIES:

OFFICE OF DIRECTOR

Director of Consumer Affairs	\$20,000
Administrative Assistant	\$12,000
Secretary	\$ 9,000

DIVISION OF CREDIT DEVELOPMENT AND COUNSELLING

Chief, Division of Credit Development and Counselling	\$18,000
Secretary	\$ 7,500

DIVISION OF EDUCATION AND RESEARCH

Chief, Division of Education and Research	\$18,000
Statistical Clerk	\$10,000
Secretary	\$ 7,500

DIVISION OF CONSUMER PROTECTION AND ENFORCEMENT

Chief, Division of Consumer Protection and Enforcement	\$18,000
Staff Attorneys, two, at range of \$14 to \$16,000	\$16,000
Legal Secretaries, two, at	\$ 9,000

NEIGHBORHOOD CONSUMER CENTERS

Community Organizer, two, at	\$15,000
Secretaries, two, at	\$ 7,500

TOTAL SALARIES	\$213,000
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ADMINISTRATIVE EXPENSES:	\$ 42,600
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TOTAL BUDGET:	\$255,600
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Footnotes

(1) No recent studies of consumer expenditures have been made by public agencies at the national level. It is instructive to contrast the findings of the national consumer surveys of the National Resources Committee in 1935-36 with those of the Bureau of Labor Statistics in 1960-61. In 1935-36, consumers not receiving public assistance allocated approximately 30 40 percent of income to food and 34 percent to shelter. In 1960-61, the national average allocation of expenditures to food was 17 percent with 25 percent allocation to shelter. For 25 consumers in the lowest income classes in 1960-61, the figures were 22 percent and 36 percent. National Resources Committee, and BLS, Survey of Consumer Expenditures, Washington, 1964. Discretionary purchasing power increased from \$40 billion in 1940 to \$200 billion in 1959, an increase of 400 percent in constant dollars. Further, this purchasing power was dispersed among a greater number of families. Katona, G., Mass Consumption Society, 1964, as cited by Warren, W., "The Direct Selling Industry", UCLA Law Review 883 (1969). The amount of consumer credit extended skyrocketed 1237.5 percent from 1940 to 1967. Ibid., n. (8), p. 892. Consumer bankruptcies rose from 9033 petitions in 1950 to 114,861 in 1963.

(2) Truth advertising first became a subject of federal regulation in the act establishing the Federal Trade Commission in 1914. Thereafter, many states adopted little FTC laws. In 1964, the National Commission on Uniform State Laws drafted a model state Deceptive Trade Practices Act, since adopted by many legislatures. The consumer affairs legislation of New York City, Nassau County, Dade County (Florida) and the District of Columbia incorporates similar regulation of misleading advertising. With the recent upsurge of interest in consumer protection, the federal agency has been more critical of advertising claims and more active in enforcement of its powers.

(3) Warren, W., "Regulation of Finance Charges in Retail Installment Sales", 68 Yale Law Journal 839, 866 (1959). "The increasingly popular reliance upon the installment plan as a method of asset accumulation has emphasized the need for effective consumer protection." With installment financing comes the conditional sales contract, which Warren has called "one of the most devastating legal documents ever written." Ibid., p. 713.

(4) Vasquez v. Superior Court, 403d 800, 808 (1971). J. Mosk for the Court.

(5) Ibid., 808. The Kerner Commission reported that "Significant grievances concerning unfair commercial practices affecting Negro consumers were found in 11 of the 20 cities studied." San Francisco was not one of the cities studied. The report said further that "It is difficult to assess the precise degree and extent of exploitation. No systematic and reliable survey comparing consumer pricing and credit practices in all-Negro and other neighborhoods has even been conducted on a nationwide basis." The report cautions that such differences may reflect real differences in costs of operation and that

and "examination of exploitative consumer practices must consider the particular structure and functions of the low-income consumer durables market." Yet it is clear, says the Commission, "that many residents of disadvantaged Negro neighborhoods believe they suffer constant abuse by local merchants." Report of the National Advisory Commission on Civil Disorders, 1968, p. 274. (Bantam).

(6) Report of the National Advisory Commission on Civil Disorders, p. 275. One study of retail practices in the District of Columbia conducted by the Federal Trade Commission found that customers of stores specializing in selling furniture and appliances to low-income consumers charged significantly higher prices than general merchandise outlets in the area: "customers of these outlets were paying an average price premium of 52 percent." Ibid, p. 276.

"(7) Ibid, 807. The court is here quoting what it calls the 'incisive observation' of Kalvin and Rosenfield, "The Function of the Class Suit," 8 University of Chicago Law Review 684, 686 (1941) on the rights of stockholders to maintain a class action. The California Court in 1971 finds an analogy between the bargaining position of stockholders in the 1941 example and consumers currently.

(8) The first such regulation of foods and drugs in interstate commerce came in 1903; the first national regulation of trade practices in .

(9) Constitution of the State of California, 1879

(10) 21 Ops. Atty Gen. 43.

(11) Ex parte Ackerman (1907) 91 P. 429, 6 C. A. 5. Ex parte Pedrosian (1932) 13 P. 2d, 389, 124 C. A. 692.

(12) 18 Ops. Atty Gen. 236; 18 Ops Atty Gen. 167; Boyd v. City of Sierra Madre (1919) 183 P. 230, 41 C. A. 520; Odd Fellows Cemetery Association v. City and County of San Francisco (1903) 73 P. 987, 140 C. 226; Stanislaus County Dairymen's Protective Association v. Stanislaus County (1937) 65 P. 2d 1305, 8 C 2d. 378; McKay Jewelers v. Rowron (1942) 122 P. 2d. 543, 19 C. 2d. 595; People v. Uffindell (1949) 202 P. 2d. 874, 90 C. A. 2d Supp. 881

(13) In re Dic, 73 C. A. 2d. 142, 14 P. 2d. 405

(14) In re Hong Shen, 33 P. 2d. 799, 98 C. A. 2d. 681; In re Hoffman 99 P. 2d. 517; In re Daniels 183 C. A. 2d. 636, 192 P. 2d. 442; In re Murphy 190 C. A. 2d. 286, 212 P. 2d. 30

(15) People v. Commons (1944) 148 P. 2d. 724, 64 C. A. 2d. 925.

(16) Horwith v. City of Fresno (1946) 168 P. 2d. 32, 83 C. A. 2d. 443; City and County of San Francisco v. Ross (1948) 189 P. 2d. 83 C. A. 2d 445; Agnew v. City of Los Angeles (1952) 243 P. 2d. 73, 110 C. A. 2d. 612.

(17) California Civil Code, Section 1752: "The provisions of this title are not exclusive. The remedies provided for herein shall not be in addition to any other procedures or remedies provided for in any other law."

(18) Warren, W., "Legislative Regulation of Retail Investment Financing" 7 UCLA Law Review 623.

(19) ibid.

(20) Final Report of Subcommittee on Lending and Fiscal Agencies, Assembly Interim Committee on Finance and Insurance, Assembly Interim Committee Reports, 1957-59, Volume 15, No. 22. Sacramento, March 1959, pp. 9-10. See also Transcript of Hearings, Subcommittee on Lending and Fiscal Agencies, Assembly Interim Committee on Finance and Insurance, San Francisco, August 21, 1958, mimeo.

(21) Final Report, 1959, pp. 9-10. Wage garnishment was also a key subject of hearings and report; federal legislation has since foreclosed major abuses in this area.

(22) The act as originally written, however, was deficient in protections against balloon payments, excessive and pyramided delinquency charges, and abuses of acceleration. Warren, W., "Regulation of Financing Charges in Retail Installment Sales", 68 Yale Law Journal 655. Some of these defects have since been remedied by legislative amendment.

(23) Section 3369 provides that "Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction. (U)nfair competition shall mean and include unlawful, unfair, or fraudulent business practice and unfair, untrue, or misleading advertising. . ." The law provided that injunctive relief could be sought by the Attorney General, by any District Attorney in the State, or by any board, officer, person, acting for the interests of itself, its members or the general public." Section 17500 of the Business and Professions Code, adopted in 1941, eliminates the scienter requirement.

(24) Reed, James, "Legislating for the Consumer: An Insider's Analysis of the Consumer Legal Remedies Act" 2 Pacific Law Journal 1, 11. Mr. Reed was Chief Counsel to the Assembly Judiciary Committee from 1967-71. He reports that after considerable negotiation with business interests, the proposed unconscionability language was dropped as too broad. This was a matter of serious concern to businessmen and its retention, according to Reed, would have jeopardized the future of the bill. Proposals were offered during the course of legislative study that Section 1770 be amended to require that the specific

unlawful acts be punishable only when committed with intent or knowledge on the part of the seller. . They were not accepted primarily because the inclusion of a scienter requirement would have resurrected all the difficulties inherent in proving common law fraud." Ibid, p. 12.

(25) California Civil Code, Section 1770. The chapter of the act detailing deceptive practices which are proscribed will be reproduced as Appendix B hereto.

(26) Reed, op. cit, p. 12.

(27) Guide to Consumer and Investor Protection Agencies prepared by the Bay Area Consumer Protection Coordinating Committee, San Francisco, 1971, esp. pp. 73-75.

(28) Vasquez v. Superior Court, 817, note (14)

(29) John Kelley, in a forthcoming article for the UCLA Law Review, observes that "consumer litigation pursuant to the Unruh Act has been rare. The statute is quite complex and thus the private bar has seldom utilized its provisions. Appellate interpretations of the Unruh Act have usually resulted from commercial litigation." (Kelley cites the case of Elster's Sales v. El Bodrero Hotel, Inc. 250 C. A. 2d. 258, 58 Cal. Rptr. 492 (1967). This case involved the sale and subsequent resale of commercial restaurant equipment.) "Consequently, the California Supreme Court did not even interpret the Unruh Act for the first ten years after its passage." Draft, "The Realities of Consumer Protection Prior to Vasquez v. Superior Court", p. 3. Mr. Kelley was responsible for the filing of Vasquez, and argued the case before the California Supreme Court.

(30) Highlights of the First Year of the Office of Consumer Counsel, October 2, 1959 - October 2, 1960. Sacramento, p. 1.

(31) Activities of the first year included a credit information program; appearances before the USDA to obtain a reversal of an order suspending federal grading of lamb; appearances at USDA hearings on pesticide residue standards; a major campaign against referral sales techniques.

(32) Nelson, Helen E., The Consumer Counsel Program in California -- Highlights of 1961. Sacramento, March 1962. The Consumer Counsel assisted in obtaining a State "Hazardous Household Substances Act; in adding cosmetics to the California Food and Drug Act, administered by the State Department of Public Health; in strengthening California laws concerning color additives in food; in requiring poultry sold in whole carcasses to be labelled if spoilage retardant is used; in obtaining legislation regulating prepaid service contracts of health and dance studios, outlawing lifetime contracts; in strengthening the Unruh Act to enable local law enforcement people to curb

referral sales and other credit sales abuses; in putting automobile warranties under the regulation of the Insurance Commissioner; in sponsoring the first training conference in the United States for local law enforcement agencies in Detection of consumer fraud.

(33) Office of the Consumer Counsel, Annual Report, June 1, 1970

(34) The agencies included in the umbrella of the Department of Professional and Vocational Standards, now called the Department of Consumer Affairs are the Board of Accountancy, the Board of Architectural Examiners, the Athletic Commission, the Board of Barber Examiners, the Cemetery Board, the Board of Chiropractic Examiners, the Board of Registration for Civil and Professional Engineers, the Contractors' State License Board, the Board of Cosmetology, the Board of Dental Examiners, the Board of Dry Cleaners, etc. Of the (now) 43 Board and Commission included, a few have an apparently dominant consumer protection function, as with the Bureau of Electronic Repair Dealer Registration, and the Bureau of Furniture and Bedding Inspection. Department of Professional and Vocational Standards, Activity Report, 1964, Sacramento, Cal. It should be observed, however, that the Bureau of Electronic Repair Dealer Registration was established at the initiative of the industry working together with consumers. "The California State Electronic Association lobbied for a number of years to require licensing of repairmen." Consumer Reports, July 1971, "TV Repair Woes", p. 438.

(35) Section 310, California ^{B and P} ~~Civil~~ Code, effective July 1971.

(36) Conversation with Mr. Ray Reid, State Department of Consumer Affairs, Sacramento, October 6, 1971.

(37) Infra, p. 11

(38) Local Laws of the City of New York for the year 1968, No. 68. Local Law 68 amended the New York City charter to establish a Department of Consumer Affairs with authority to enforce all laws relating to advertising and offering for sale and sale of all commodities, and services; to receive complaints, and initiate investigations; to hold public and private hearings, administer oaths, take testimony, serve subpoenas, and issue rules; to develop programs for education and research. In New York City, the charter may be amended by a simple majority vote of the City Council.

(39) Local Laws of New York City for the Year 1969, No. 83, Consumer Protection Law of 1969. In 1970 additional legislation was passed requiring open dating of perishables and unit pricing. At present, less than one-third of the activity of the New York City Department of Consumer Affairs involves the functions of the sealer. Telephone conversation with Jean Ende, New York City Department of Consumer Affairs, September 3, 1971.

(40) Local Law No. 9-1967, passed by the County Board of Supervisors on June 9, 1967, created a commissioner of consumer affairs with power to receive and investigate complaints, initiate investigation of frauds, hold hearings, take testimony under oath, and require production of evidence; to represent consumers before administrative agencies and legislatures; to conduct research and investigation. In 1968 an advisory board of citizens was created, advisory to the commissioner. And in 1970, the Nassau County Board of Supervisors passed Local Law No. 2-1970 (effective February 18) which enumerated unfair trade practices which were to be prohibited.

(41) The language here is of the Nassau ordinance, Local Law 2-1970, Section 21 c.

(42) Memorandum from New York City Department of Consumer Affairs, "Basic Features of New York City Consumer Protection Act in Comparison of Existing State Legislation." The Uniform Commercial Code is here described as a "codification of the common law on all aspects of commercial transactions."

(43) The Uniform Consumer Credit Code was the subject of a hearing before an Assembly Committee in 1969, and was criticized by several consumer representatives as a step backwards from the existing protections of the Unruh Act.

(44) San Francisco City Charter, Section 21, Power of Hearing, Inquiry, and Subpoena. The Mayor, the Board of Supervisors, the Chief Administrative Officer, the Controller, or any Board or Commission appointed by the Mayor relative solely to the affairs under its control, may require such periodic or special reports of departmental costs, operation and expenditures, examine the books, papers, records and accounts of, and inquire into matters affecting the conduct of any department or office of the City and County, and for that purpose may hold hearings, subpoena witnesses, administer oaths, and compel the production of books, papers, testimony and other evidence.

(45) Section 19 of the San Francisco City Charter specifies that "each Board and Commission appointed by the Mayor or otherwise provided by this charter, shall have powers and duties as follows: (a) to prescribe reasonable rules and regulations not inconsistent with this charter for the conduct of its affairs . . .

(46) City of Santa Monica v. Grubb, 54 CR 210, 214 (1966)

(46a) Charter of the City and County of San Francisco, Section 26

(47) Charter of the City and County of San Francisco, Section 29, emphasis supplied.

(44)

(43a) Annual Report to Mayor, Submitted by John Jay Ferdon, District Attorney, July 1, 1970-June 30, 1971, p. 1.

(43b) Ibid, p. 3.

(43c) Ibid, p. 4

(43d) Ibid, p. 7

(43e) Ibid, p. 7.

(43f) Ibid, p. 15

(43g) Ibid, p. 17.

(43h) Ibid, p. 20

(43j) Ibid, pp. 21-22.

(43k) Ibid, p. 22. In addition to three cases filed by the San Francisco District Attorney under 17536, of which one was closed, two cases have been filed jointly with the Attorney General. (Source: Telephone conversation with Mr. Julian Rhine by Glenn Roberts, October 1971.)

